

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
DIANE PERITZ,

Plaintiff,

- against -

Docket No.: 16-CV-05478
(SJF)(AYS)

AFFIDAVIT

NASSAU COUNTY BOARD OF COOPERATIVE
EDUCATIONAL SERVICES, BONNIE HELLER,
and JANET WEISEL,

Defendants.
-----X

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

DR. TRACEY NEKULAK, affirms the truth of the following under the penalties of
perjury:

1. I am the Executive Director of Human Resources of the Nassau Board of
Cooperative Educational Services ("Nassau BOCES"). I have been employed in this capacity
since January, 2015.

2. In my capacity as Executive Director, I am responsible for the oversight of the
Human Resources Office and the maintenance of the personnel records of Nassau BOCES
employees, and I am involved in the hiring, discipline, and termination of Nassau BOCES
employees. The Human Resources Office is also responsible for the handling of medical
accommodation requests and internal complaints of discrimination and/or harassment.

3. This Affidavit is based on my personal knowledge of the facts and circumstances
involved and a review of the applicable records.

4. Occupational therapists hired by Nassau BOCES are Civil Service Employees and they are required to serve a probationary period of twenty-six weeks. If the individual successfully completes that probationary period, he or she will receive Civil Service permanent status. Occupational therapists are not eligible for tenure within the meaning of the New York Education Law. Occupational therapists are required to demonstrate sufficient performance during the probationary period in order to receive permanent status and permanent status is in no way automatic or guaranteed.

5. Towards the end of the probationary period of an occupational therapist, my office reminds the Special Education Department that a recommendation regarding the therapist's continued employment will be needed. A recommendation based on the observations and evaluations of the therapist's supervisor(s), and sometimes additional information provided by colleagues and other administrators, is then made to my office and the Superintendent's Office. If the therapist is not recommended for permanent status, the Superintendent and/or Deputy Superintendent recommends to the Board of Nassau BOCES that the therapist be terminated. The Board of Nassau BOCES then acts on the recommendation by formal vote.

6. Nassau BOCES may terminate an occupational therapist at any time during his or her probationary period. Pursuant to the applicable rules and regulations of the Nassau County Civil Service Law, Nassau BOCES is required to give probationary occupational therapists two weeks notice prior to termination.

7. On September 28, 2015, I reminded the Executive Director of Special Education that Ms. Peritz would be eligible for completion of probation on November 6, 2015 and requested that recommendation as to her continued employment be returned to my office. See

Exhibit "1".

8. On October 9, 2015, the Executive Director of Special Education, Karen Ellis, advised the Deputy Superintendent, Dr. Robert Hanna, that Ms. Peritz was not recommended for continued employment because she had not successfully completed her probationary period. The recommendation was based on Ms. Weisel's observations that Ms. Peritz failed to remain engaged with a student during a session, was unable to demonstrate instructional control and direction, failed to provide therapeutic input, direction and instruction, failed to address goals in a student's Individualized Education Plan, and failed to properly utilize a 1:1 aide present during a session. Based on these observations, it was concluded that Ms. Peritz demonstrated minimal therapeutic techniques that were below the standard expected and desired from Nassau BOCES occupational therapists. The recommendation was also based on concerns regarding Ms. Peritz's lack of knowledge of the plans applicable to the students in her caseload and her veracity because it was believed she reported inaccurate information regarding the students in her caseload. See Exhibit "2". The form acknowledging that Ms. Peritz was not being recommended for continued employment was signed by Ms. Weisel and Ms. Ellis and returned to my office.

9. On October 15, 2015, I directed Ms. Peritz to appear for a meeting at my office on October 20, 2015. Ms. Peritz was permitted to attend with Union representation. See Exhibit "3".

10. During this meeting Ms. Peritz was advised that she was being reassigned to home effective October 21, 2015 and that Nassau BOCES was seeking to terminate her employment. See Exhibit "4".

11. Ms. Peritz was also provided a copy of her Classified Employee Evaluation Report for the 2015-16 school year during this meeting, but she refused to sign the Evaluation.

12. This Evaluation summarized the observations of her performance while employed by Nassau BOCES and noted that Ms. Peritz did not demonstrate the performance, judgment, and conduct that is expected by Nassau BOCES.

13. On October 22, 2015 the Board of Nassau BOCES voted to terminate Ms. Peritz's employment effective November 5, 2015. Ms. Peritz was advised of this in writing on October 23, 2015. See Exhibit "5"

14. On October 29, 2015 Ms. Peritz filed a grievance challenging her termination and the manner in which she was evaluated during her probationary period. This grievance proceeded to the third level at which it was denied by the Superintendent. See Exhibit "6".

15. The termination of Ms. Peritz was based entirely on her performance as a therapist during her probationary period.


DR. TRACEY NEKULAK

Sworn to before me on this
18th day of September, 2017


NOTARY PUBLIC

ELIZABETH E. CALARRESE
NOTARY PUBLIC, State of New York
No. 01C 6014235
Qualified in Suffolk County
Commission Expires October 5, 20 18

EXHIBIT 1

Interoffice Memo

To: Karen Ellis

From: Tracey Nekulak

Date: September 28, 2015

Subject: Employee Completion of Probationary Period

Employee: Diane Peritz

Title: Occupational Therapist

The above-employee will be serving a 26-week probationary period prior to being eligible for completion of probation on 11/6/15

Attached is an Employee Evaluation form that should be completed and returned to the Department of Human Resources not later than 10/8/15.

Completion of probation recommendations must be submitted to the Board of Education prior to the completion of probation date, and the Nassau County Civil Service Commission must be made aware of our intentions two weeks prior to the completion date of the probationary period.

Failure to submit forms in time will result in our inability to exercise the right of termination inherent in the probationary period concept.

Thank you for your cooperation.

Completion of Probation Recommended:

() Yes

(i) No

Janet Wesel Asst. Coord. OT/PT Services 10/19/15
 Evaluator's Signature Title Date

This form must be countersigned by the Executive Director of the Department.

[Signature] 10/19/15
 Executive Director's Signature Date

EXHIBIT 2

DEPARTMENT OF SPECIAL EDUCATION

To: Dr. Robert Hanna
From: Karen Ellis *KE*
Date: October 9, 2015
Re: Probation Recommendation for Ms. Diane Peritz

Ms. Peritz's was hired by Nassau BOCES on March 5, 2015. She originally worked three days and increased to full time position on April 14, 2015. Initially, Ms. Peritz's assignment was split between CCA and the Jerusalem Avenue School. She is presently working full time with a caseload split between CCA and the Rosemary Kennedy School.

Ms. Peritz had difficulty this school year in providing occupational therapy (OT) during a session as was observed by her supervisor, Ms. Janet Weisel, on September 30, 2015. She failed to remain engaged with the student she was providing related services to and was unable to demonstrate instructional control and direction of her lesson with a student during this observation. She failed to provide therapeutic input, direction and instruction and allowed a student to take control of the session where the student pushed away materials and preceded to take off his shoes and socks. Ms. Peritz did not intervene or seek the assistance of the student's 1:1 aide who was present in the session. Additionally, she did not address the student's IEP goals. Ms. Peritz demonstrated minimal therapeutic techniques, which were below the standard we expect from occupational therapists working at Nassau BOCES.

On October 5, 2015 a disciplinary meeting was held to discuss her failure to read student's behavioral intervention plans (BIP) at Rosemary Kennedy prior to meeting with the students. At this meeting she was directed to read and follow the student's BIPs and to speak with the teachers concerning each student's behavior plan. In this meeting Ms. Peritz stated that she read 20 BIPs and then her caseload was changed, necessitating her to read an additional 20 BIPs. In fact, only 3 students on her caseload at RKS and 5 students on her caseload at CCA had BIPs. This discrepancy called to question her knowledge, accuracy and veracity of what she reported at the October 5 meeting.

Ms. Peritz has not successfully completed her probationary period and is not being recommended for permanent status.

KE/cn

EXHIBIT 3

HAND DELIVERED

DEPARTMENT OF
HUMAN RESOURCES

Tracey A. Nekulak, Ed.D.
Executive Director
516) 396-2358
nekulak@nassaboces.org

Jelma Stoddard, Esq.
Assistant Director
516) 396-2360
stoddard@nassaboces.org

October 15, 2015

Ms. Diane Peritz
112 Holiday Drive
Woodbury, NY 11797

Dear Ms. Peritz:

Please report to the Nassau BOCES Department of Human Resources at 71 Clinton Road in Garden City on Tuesday, October 20, 2015 at 1:00pm.

Arrangements have been made with Robert Dreaper to attend as you are entitled to be accompanied by a representative of your bargaining unit. Should you wish to waive this right, you must notify my office before October 20, 2015.

Yours truly,



Tracey A. Nekulak, Ed.D.
Executive Director
Human Resources

Cc: Karen Ellis
Carmine Scerra
Robert Dreaper
Janet Weisel

EXHIBIT 4

DEPARTMENT OF
HUMAN RESOURCES

Tracey A. Nekulak, Ed.D.
Executive Director
(516) 396-2358
tnekulak@nasboces.org

October 20, 2015

Selma Stoddard, Esq.
Assistant Director
(516) 396-2360
stoddard@nasboces.org

Ms. Diane Peritz
112 Holiday Drive
Woodbury, NY 11797

Dear Ms. Peritz:

Effective October 21, 2015, you have been administratively reassigned to your home.

During this administrative reassignment, you are not permitted to be on any Nassau BOCES property unless directed to do so.

Sincerely,



Tracey A. Nekulak, Ed.D.
Executive Director
Human Resources

Cc: Dr. Robert Dillon
Robert Dreaper
Personnel file

EXHIBIT 5

DEPARTMENT OF
HUMAN RESOURCES

Tracey A. Nekulak, Ed.D.
Executive Director
(516) 396-2358
tnekulak@nasboces.org

Julia Stoddard, Esq.
Assistant Director
(516) 396-2360
jstoddard@nasboces.org

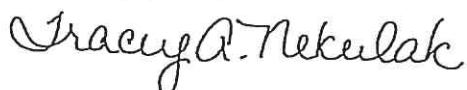
October 23, 2015

Ms. Diane Peritz
112 Holiday Drive
Woodbury, NY 11797

Dear Ms. Peritz:

This is to advise you that the Board of Cooperative Educational Services of Nassau County at its meeting held on October 22, 2015, terminated your employment as Occupational Therapist effective November 05, 2015.

Very truly yours,



Tracey A. Nekulak, Ed.D.
Executive Director
Human Resources

TAN/ec

EXHIBIT 6

NABCOT NASSAU BOCES CENTRAL COUNCIL OF TEACHERS, LOCAL 2851

2938 Hempstead Turnpike, Ste. 208, Levittown, N.Y. 11756
(516) 520-7985

GRIEVANCE FORM

TO: Dr. Tracey Nekulak
BOCES Executive Director, Dept. of HR

ARTICLE III, Section 6 (Probationary Period), TYPE N/A CONTROL NUMBER O-8-15
Subsection 6.3 of the NABCOT/BOCES OT/PT Agreement.

Subsection 6.3 "Thirty (30) days notice shall be given by the administration to the employee in the event of termination during the probationary period."

I met with you on October 20, 2015, whereby you notified me that I was going to be terminated by BOCES, effective at the close of the business day on November 3, 2015. BOCES did not evaluate me properly during my probationary period, nor did they afford me the 30 day notice as per Article III, Section 6, Subsection 6.3 of the contract. Please schedule a meeting so that we may discuss this grievance. Thank you.

REMEDY DESIRED:

That I, Diane Peritz, will be returned to my position as an Occupational Therapist at Nassau BOCES with full tenured rights; That I, Diane Peritz, will be evaluated as a tenured staff member as outlined in Article III "Professional Status and Rights" of the collective bargaining agreement; That I, Diane Peritz, will be paid for any lost salary plus benefits from the date of my termination by BOCES through my re-instatement as a tenured Occupational Therapist in BOCES; Any other remedy deemed appropriate by the court.

SIGNATURE Diane Peritz FACULTY OR UNIT OT/PT Council
Diane Peritz, OTR

	STEP 1	STEP 2	STEP 3	ARBITRATION
DATE FILED		10/29/15		
DATE MEETING HELD				
DATE RESPONSE REC'D				

WHITE - Administration
YELLOW - NABCOT
PINK - Human Resources
GOLD - Department Head

DEPARTMENT OF
HUMAN RESOURCES

Tracey A. Nekulak, Ed.D.
Executive Director
(516) 396-2358
mekulak@nassaboces.org

Selma Stoddard, Esq.
Assistant Director
(516) 396-2360
sstoddard@nassaboces.org

November 16, 2015

Mr. Robert Dreaper
2938 Hempstead Turnpike
Suite 203
Levittown, NY 11753

Re: O-8-15

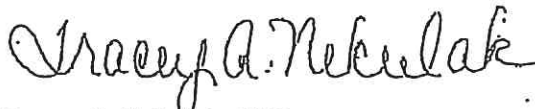
Dear Mr. Dreaper:

This letter is regarding the above referenced grievance that was held in Human Resources on Monday, November 9, 2015. In attendance was Ms. Diane Peritz, Mr. Robert Dreaper, NABCOT president, Dr. Carmine Scerra, Associate Director of Special Education and Dr. Tracey A. Nekulak, Executive Director of Human Resources.

After careful consideration of all facts presented to me at the meeting, I have found no violation of Article III, Section 6, Subsection 6.3 of the NABCOT/BOCES OT/PT Agreement, therefore this grievance is denied.

Should you have any questions, please contact me at your earliest convenience.

Sincerely,



Tracey A. Nekulak, Ed.D.
Executive Director
Human Resources

Cc: Karen Ellis
Dr. Carmine Scerra

NABCOT

NASSAU BOCES CENTRAL COUNCIL OF TEACHERS, LOCAL 2551

November 23, 2015

Dr. Robert Dillon
Deputy Superintendent
BOCES Department of HR
71 Clinton Road
Garden City, NY 11530

Re: Grievance # O-8-15
(Probationary Period - D. Peritz)

Dear Dr. Dillon,

Please schedule a Third Level Hearing in regard to the above captioned grievance that was not satisfactorily resolved at the Second Level with Dr. Nekulak. Thank you.

Sincerely,



Robert J. Dreaper
President

cc: Dan Auriemma
Dr. Tracey A. Nekulak
Diane Peritz

2938 Hempstead Turnpike, Suite 203
Levittown, New York 11756
Phone: 516-520-7985
Fax: 516-520-7987

Affiliated with the New York State United Teachers, American Federation of Teachers, AFL-CIO

54

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ADMINISTRATION

Dr. Robert R. Dillon
District Superintendent
(516) 396-2202
rdillon@nassaboces.org

February 1, 2016

Dr. Lydia Begley
Associate Superintendent
for Educational Services
(516) 396-2219
lbegley@nassaboces.org

Joan S. Siegel
Associate Superintendent
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Dr. Robert J. Hanna
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District Superintendent
(516) 396-2205
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Lawrence McGoldrick
Assistant to the District
Superintendent for Special Projects
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lmcgoldrick@nassaboces.org

MEMBERS OF THE BOARD

Eric B. Schultz
President

Susan Bergtraum
Vice President

Deborah Coates
District Clerk

Michael Weinick
Vice District Clerk

TRUSTEES

Ronald Ellerbe

Martin R. Kaye

Fran N. Langsner

Robert "B.A." Schoen

Stephen B. Witt

Mr. Robert Dreaper
Nassau BOCES Central Council of Teachers
2938 Hempstead Turnpike, Suite 203
Levittown, NY 11756

RE: Grievance O-8-15

Dear Mr. Dreaper:

A grievance meeting at the third level was held on December 14, 2015. A decision on said grievance was due 10 working days after the third level meeting with the superintendent. With consent of Mr. Robert Dreaper, NABCOT Union President, the decision was held in abeyance pending settlement discussions with the parties.

Throughout the process Nassau BOCES maintained there was no merit to the grievance. We were informed by Mr. Robert Dreaper that the grievant, Ms. Diane Peritz is not amenable to a settlement at this time.

For the foregoing reasons, I hereby issue my ruling on the grievance which is denied.

Sincerely,



Dr. Robert R. Dillon
District Superintendent of Schools

RRD/ts

cc: Karen Ellis
Dr. Lydia Begley
Dr. Tracey Nekulak